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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-sixth session

SUMMARY RECORD OF THE 1393rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 21 March 2000, at 3.30 p.m.

Chairman: Mr. SHERIFIS

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GE.00-41162 (E)

The meeting was called to order at 3.35 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Tenth to twelfth periodic reports of Australia (CERD/C/335/Add.2)

1. At the invitation of the Chairman, Mr. Luck, Mr. Ruddock, Ms. Duffield, Mr. Farmer, Mr. Sherwin, Mr. Vaughan, Mr. Hughes, Ms. Horner, Mr. Heyward and Mr. Choi (Australia) took places at the Committee table.

2. Mr. RUDDOCK (Australia) said that as Minister for Immigration and Multicultural Affairs, he was well aware that many of the areas of concern to the Committee were directly related to fields under his responsibility. He had been a member of Parliament for nearly 27 years, and had had a personal and continued interest in both human rights in general and in immigration and multicultural affairs in particular. Australians did not view immigration as simply a movement of people, but rather in the context of the country's human rights obligations, particularly in relation to refugees. The country had consistently made significant contributions to the resettlement work of the Office of the United Nations High Commissioner for Refugees (UNHCR). Australia also experienced economic migration and immigration for family reunification. Ultimately, when people came to a new country, the policies and programmes which helped them develop their lives in the new context were crucial to their success. The management of settlement programmes in a culturally diverse society was therefore of prime importance.

3. During his tenure as a member of Parliament he had served on the Standing Committee on Aboriginal Affairs of the House of Representatives and on other committees dealing with Aboriginal rights. More recently, the Prime Minister had asked him to assist in the Government's work on reconciliation, a very important matter involving all Australians in an effort to look at less satisfactory aspects of their shared history so as to see how they could move forward together. The day of Australia's presentation of its report coincided with the International Day for the Elimination of Racial Discrimination, which had been designated in Australia as national Harmony Day, an event aimed at reinforcing the concepts of frankness, fairness, tolerance, humanity and mutual respect, the very principles upon which the Convention was founded. The Australian Government had adopted an education programme called Living in Harmony to address those issues, and had designated 21 March as a national day for celebrating and reflecting upon the country as a harmonious and culturally diverse nation.

4. The periodic report underlined the country's commitment to those principles, and outlined in detail the programmes undertaken to promote an inclusive and multicultural society, which served the interests of all citizens and directly addressed the issues of racial discrimination and equality. Although the report provided no more than a snapshot of the Government's policies and the various initiatives undertaken, the Government was committed to ensuring equality and combating the evil of racial discrimination. Those aims were actively pursued through a process of consultation aimed at changing unacceptable attitudes and resolving the problems of the past.

5. The report reflected not only the federal Government's commitment to combat racism, but also that of the constituent states and territories. It also expressed the views of Australian non-governmental organizations (NGOs) which had cooperated in its preparation. The state and territorial governments and NGOs would be taking part in the follow-up to the Committee's work as well. The view of the federal Government was that the problem of racism could not be tackled by government policies alone, but required extensive consultation and the involvement of the broader community. The report represented a comprehensive record of Australia's efforts in that regard.

6. Australia had always taken its commitments to human rights very seriously. It had recently led an international force to East Timor to restore stability after human rights abuses had been committed following the vote for independence. The Government had also ensured a humanitarian response during the crisis, for example by evacuating some 1,800 people under safe haven arrangements from the United Nations compound in Dili. Notwithstanding the geographical distance from the Balkans, Australia had taken in some 4,000 Kosovo Albanian refugees over and above the normal humanitarian refugee allotment of 12,000 admissions per year of people at risk. During his recent visit to Australia, the United Nations Secretary-General had noted that Australia was a model member of the Organization and could be justifiably proud of its international record of close cooperation with the United Nations. The submission of the tenth to twelfth periodic reports was yet another demonstration of the country's commitment to human rights.

7. Multicultural Australia was built upon the foundations of the country's first peoples, the Aboriginal and Torres Strait Islander peoples, who were among the oldest civilizations in the world. More recently there had been successive waves of immigrants from about 130 different countries. Historically, it was clear that Australians had not always fully appreciated the benefits of cultural diversity, and government practices and policies had not always adequately reflected that diversity. In the early part of the twentieth century the Government had adopted policies which would today be rejected out of hand, and which in any case would not be sustainable. However, as Australian society and culture changed rapidly after World War II and especially over the last 25 years, successive Governments had moved to adjust their policies so as better to reflect a culturally diverse society and to promote harmony among different groups. The positive ideal which the Government pursued included respect for the peoples of all cultural backgrounds and left no place for racist attitudes and behaviour.

8. The Government had recently adopted a new National Agenda for Multicultural Australia, which emphasized those factors that united all citizens: a desire for social harmony, the benefits of diversity, respect for other cultures and the ideal of equal opportunity for all Australians, regardless of background. As part of the Agenda, the federal Government worked with local governments, the private sector and the broader community. Public information strategies made use of the Internet to raise awareness and understanding of cultural diversity. To assist the Government in implementing the Agenda, a Council for Multicultural Australia had recently been established, with responsibility for promoting harmonious community relations, assisting in coordinating policies and programmes and raising awareness of the economic and social benefits of cultural diversity.

9. The successful implementation of the national anti-racism campaign Living in Harmony, also reflected Australia's commitment to multiculturalism. That campaign was a community-based education programme which made use of community grants and special initiatives to reinforce harmony among individuals and different cultural groups, including the first peoples, Australia's indigenous nations. A great deal of research had been carried out prior to the implementation of the programme in order to determine how best to influence people's attitudes. It had been ascertained that it was preferable to build on the positive values already inherent in society, such as tolerance and harmony, as a means of achieving greater acceptance by a broad range of public opinion.

10. As Minister for Immigration and Multicultural Affairs, he was proud to say that over 10 per cent of the grants disbursed under the community grants programme had been allocated to indigenous organizations. The past treatment of Australia's indigenous peoples was one of the greatest blemishes of Australian history. The doctrine of terra nullius had been used to deny indigenous land rights, and indigenous peoples had suffered many injustices in past generations. While it was impossible to undo the wrongs of the past, the Government was committed to addressing the current unacceptable level of disadvantage among indigenous groups, a problem which would take some time to overcome.

11. At the same time it had to be admitted that, while some improvements had been made, they were not enough. The Government believed that practical measures could lead to better results, and had targeted the fields of health care, education, housing, employment and economic development opportunities as priorities. Despite claims to the contrary, Government financing of such programmes had increased in recent years, and had grown since the writing of the report from $A 1.8 billion to $A 2.2 billion. Of course, money alone could not solve the problem, as individuals and communities had to take some responsibility for their own welfare; they needed to have the chance to claim success or to learn from failure. The Government, while maintaining support programmes, had made efforts to empower Aboriginal and Torres Strait Islander peoples to overcome the legacy of Australia's past and to eliminate the need for welfare support, notably by improving their economic development prospects in order to build their own future. One of the tangible demonstrations of such empowerment was the presence in the public gallery at the Committee session of representatives of those groups, which reflected their self-confidence, the tremendous support they received and their undoubted capacity to put forward their points of view.

12. In August 1999, in a sincere effort to empathize with the problems faced by the indigenous peoples, Parliament had passed a motion reaffirming its commitment to reconciling the interests of Australia's indigenous and non-indigenous peoples. In his Federation address of 18 January 2000, the Prime Minister had also renewed the Government's commitment to ensuring the lasting reconciliation of all Australians. That would be achieved through an on-going process which required a meeting of hearts and minds in order to effect lasting change.

13. Turning to the area of native title, he noted that in August 1999 the Committee had expressed some concerns about the Amended Native Title Act. The Wik decision by the High Court in 1996 had created a great deal of uncertainty and placed the Government in a difficult position, since according to that ruling large areas of the Australian continent, much of it privately owned, could conceivably be considered to be indigenous land. As it was unrealistic

for the issue of native title to be addressed on a case-by-case basis in claims under common law title brought before the courts, the Government had been forced to deal with the issues raised by the High Court's decision. Following an especially rigorous democratic process of public consultations involving all groups, including indigenous peoples, the House of Representatives and the Senate, where the Government did not have a majority, passed the Native Title Amendment Act 1998, which sought to balance the interests of the different tiers of government, miners, pastoralists and indigenous peoples.

14. The Act preserved the principles of the original Native Title Act 1993. Any perception that the Amendment Act represented a regression in terms of native title land rights was erroneous. In fact, 15 per cent of the continent was under indigenous ownership or control, including 42 per cent of the Northern Territory, and the national programme of land purchases for indigenous purposes, begun 25 years before, had spent large sums at both the Commonwealth and state levels. In addition, under the new legislation, 79 per cent of the continent could potentially be claimed by indigenous peoples. The Amendment Act, in force for more than a year already, was working effectively and fairly and was a reflection of the Government's recognition of the vital connection between indigenous peoples and the land.

15. Mr. HUGHES (Australia) recalled that Australia had a wide range of cultures and religions. The population had in fact doubled during the previous 50 years, largely as a result of immigration. In order to ensure the equitable participation of all in Australian society, the Government had pursued a policy of multiculturalism based on respect for cultural diversity and equality of opportunity. That policy was supported by an institutional framework at the federal level, which included a Charter of Service for a Culturally Diverse Society, comprehensive migrant and refugee settlement programmes offering language training and translation services, funding to community organizations providing support for immigrants, and specialized services catering to the needs of humanitarian entrants. In addition, national multi-language television and radio broadcasting services were available and programmes had been undertaken to encourage appreciation of social diversity and the benefits that flowed from it.

16. A number of specialized structures and services had been set up for indigenous people. For example, the Aboriginal and Torres Strait Islander Commission (ATSIC) was a unique structure which, although a government department, was controlled by an elected Aboriginal board; it managed half of the federal Government's Aboriginal-specific programmes. There were also special laws to protect indigenous culture and heritage and enable indigenous communities to claim or purchase land and there were special Aboriginal housing, health, education, employment and justice programmes, most of which were delivered through the network of more than 2,000 Aboriginal community-controlled organizations. There was also a commitment at the state, territory and local government levels to develop institutional frameworks and programmes which supported multiculturalism. Efforts to promote multiculturalism and a vision of society which reduced the scope for discrimination were of course backed up with anti-discrimination legislation and mechanisms

17. The federal Government had recently renewed its commitment to multiculturalism in the form of a New Agenda for Multicultural Australia launched in December 1999. The Agenda was being implemented through a practical plan of action, which would ensure that the Government dealt effectively with the issues arising from Australia's cultural diversity. A new

Council for Multicultural Australia, would assist with implementation. Along with the new Agenda, the federal Government had begun to implement its Living in Harmony initiative to help promote recognition of and support for community harmony and to challenge Australians to show that they could live in harmony despite their diversity. The initiative had three main components. First, the community grants programme gave community organizations the chance to design projects to address specific local issues; second, the partnership programme involved partnership between the federal Government and organizations and businesses to promote cultural diversity; third, a public information strategy sought to raise public awareness of multiculturalism, for example by declaring 21 March, the United Nations International Day for the Elimination of Racial Discrimination, Australia's national Harmony Day, during which Australians could celebrate diversity.

18. Australia's multicultural policy thus provided a very positive and constructive framework for dealing with residual racism and bigotry and was supported by a social infrastructure aimed at meeting the country's diverse challenges. The country would continue its efforts to build a harmonious and tolerant society and to minimize the scope for racist attitudes, views and behaviour.

19. Mr. VAUGHAN (Australia) noted that the two indigenous groups within the Australian population, the Aboriginals and the Torres Strait Islanders, made up 2.1 per cent of the Australian population, and were a diverse group ranging from those living a relatively traditional lifestyle in remote areas to those of mixed or distant ancestry living in metropolitan areas. The 70 per cent of Aboriginals and Islanders who lived outside major cities shared some of the same problems of access to services and facilities as the 37 per cent of non-Aboriginal Australians who lived in those same areas. The indigenous population was growing at double the rate of the general population (2.3 per cent), which placed heavy demands on housing and other services. That growth was driven by the higher birth rate of indigenous women but also by the high rate of intermarriage between indigenous and non-indigenous Australians. Children of such unions were entitled to be identified as Aboriginal.

20. The level of disadvantage experienced by the indigenous population of Australia was the legacy of the country's colonial history. The socio-economic status of the indigenous population was summarized in paragraph 60 of the report. Australian Governments, particularly since the 1970s, had been working determinedly to correct that situation. Laws had been passed to outlaw racial discrimination and promote equality of opportunity and treatment, establish indigenous decision-making structures, protect indigenous culture and heritage and enable indigenous communities to have access to and claim land. The federal Government had an array of such special laws and programmes, in addition to mainstream health, education and similar services available to indigenous Australians. Half of such programmes, on which federal spending had reached record levels, were controlled by the indigenous communities themselves through the Aboriginal and Torres Strait Islander Commission (ATSIC).

21. The federal Government had identified four core priorities for addressing indigenous needs. In the area of housing, the proportion of indigenous families who owned their own homes had increased from 24 per cent in the early 1970s to 33 per cent currently and the average number of persons per household had been reduced from 4.4 to 3.7. In the area of health, excessive tobacco and alcohol consumption and poor diet remained concerns, but federal

spending on indigenous health between 1996 and 2003 was scheduled to increase by 62 per cent. Indigenous infant mortality rates had been reduced from 20 times to just over twice the non-indigenous rate. The prevalence of trachoma had been substantially reduced and male death rates had been declining since the mid-1980s.

22. In the field of education, the proportion of indigenous adults who had never attended school had fallen from 14 per cent in the mid-1970s to 3 per cent currently. The proportion of indigenous children who had completed secondary education had increased from 8.6 per cent in the mid-1970s to approximately 33 per cent. The proportion of indigenous people with post-secondary qualification had doubled in the preceding decade and higher education enrolment had tripled over the same period. With regard to unemployment, lack of education and remote location were the two major contributing factors to high indigenous unemployment rates. However, one quarter of indigenous Australians in the labour force were involved in Community Development Employment Projects to acquire skills and experience for future employment. The proportion of indigenous Australians in vocational training courses had increased from 3.2 per cent in 1986 to 18 per cent in 1996 and the proportion of indigenous Australians in professional occupations had increased in that same period from 14.2 per cent to 22 per cent.

23. In the area of law and justice, although incarceration rates for indigenous people remained unacceptably high, that rate had fallen over the preceding five years. The number of Aboriginal deaths in custody was currently lower than the non-Aboriginal rate and Aboriginal Australians were receiving shorter sentences than non-Aboriginals for most criminal offences.

24. With regard to the question of land, native title was only part of a long-standing policy and legislative framework which enabled indigenous Australians to own land and assert their land rights. In fact, 15 per cent of the land already owned or controlled by indigenous peoples had been secured prior to and independently of the common law concept of native title, which had been recognized only since 1992. The federal Government had initiated a land purchase programme for Aboriginals in the early 1970s and from the mid-1970s federal and state authorities had legislated the return of certain Crown lands to Aboriginal peoples and allowed claims to other such lands. For example, 42 per cent of the Northern Territory was either owned or controlled by Aboriginals, including mining rights, and Aboriginal land owners in the Territory were receiving payments and royalties from mining operations.

25. Ms. HORNER (Australia) noted that in its Decision 2 (54) of March 1999 the Committee had expressed concern over the perceived "winding back" of the protections contained in the Native Title Act 1993 and the "lack of effective participation by indigenous communities" in the formulation of the Native Title Amendment Act 1998. She stressed that the Australian Government was committed to meeting its Convention obligations and recognized that the unique circumstances of the indigenous people required particularly careful consideration.

26. The amended Act contained extensive provisions which recognized the unique nature of native title rights and went beyond the requirements of formal equality. Those provisions were of three types. The first recognized and protected native title; examples included a prohibition on the extinguishment of native title except by agreement or by non-discriminatory compulsory acquisition subject to just compensation; a rule that native title could be only temporarily

affected by government acts, for which compensation was payable; and Government funding of special tribunals to deal with native title questions and indigenous organizations to assist native title holders. The second type of provision addressed the special features of native title, including special rights to ensure that there was consultation about mining and other activities on native land, procedural rights for those who claimed native title as well as those whose title had been established by the courts, and an emphasis on negotiated and mediated agreements which gave special statutory status to native title holders and provided them with legal certainty and protection. The third type of provision addressed historical extinguishment of native title rights, including the restitution of those rights on land where native title had been historically extinguished and a rule that native title was only suspended, not extinguished, by mining leases. Furthermore, the Indigenous Land Corporation, set up by the Commonwealth Parliament and funded by the Government, continued to acquire land for indigenous Australians.

27. The Government had felt obliged to act in response to the High Court's Wik decision. The Native Title Act 1993 had not provided for the possibility that native title could exist on pastoral leases. Failure to remedy that problem would have been irresponsible and would have led to further uncertainty for both indigenous and non-indigenous Australians. Leaving issues to be determined by common law would have resulted in extensive litigation and would have left native title more vulnerable to extinguishment than was the case under the Native Title Amendment Act 1998.

28. In her Government's view, the four provisions noted by the Committee in its Decision 2 (54) (para. 7) of March 1999 as discriminating against indigenous title holders, namely the validation, confirmation of extinguishment and primary production provisions and the changes to the right to negotiate, had been justifiable and proportional in the particular circumstances and were not inconsistent with the Convention.

29. It was worth noting that earlier in the month, the Full Federal Court, in a decision on the Miriuwung Gajerrong case, had upheld the legal basis on which the confirmation provisions had been formulated in the 1998 amendment. Based on that decision, there was no evidence to support the suggestion that the confirmation provisions went further than the common law. Moreover, prior to the amendment's enactment in July 1998, there had clearly been effective participation by indigenous representatives in the form of direct consultations with the Government and negotiations with the parties concerned, which had had a considerable impact on the amendment. The amended Act had been the subject of 18 months of intensive public scrutiny, three separate parliamentary inquiries, at which indigenous representatives had given evidence, and more than 100 hours of consideration in Parliament.

30. The Native Title Amendment Act had been in force for 18 months, and many of the concerns expressed during debate on the amendment had proved unwarranted. The improved registration test, while imposing a higher threshold to access negotiation rights, had reduced the number of contested claims. As at 10 March 2000, 95 per cent of native title applications submitted since the amendment had come into force in September 1998 had passed the new registration test. Even if a claim was not registered, it would still be ruled on in the courts. There were currently 563 native title claims active nationally that were under the management of the Federal Court and subject to mediation by the National Native Title Tribunal. There had

been 10 native title decisions to date; importantly, 5 of those had been settled by agreement between the native title holders and the Government of the relevant state or territory or other parties.

31. The amended Act emphasized a non-adversarial, practical approach to resolving native title issues. The reduction of 21 per cent in the number of native title applications pointed to more credible claims being submitted and to a consolidation of applications by the Federal Court, as well as to the many voluntary combinations of claims made by native title applicants themselves. That was not necessarily a reduction in the area covered by the applications, but in the number of overlapping claims.

32. The amendment had encouraged the conclusion of indigenous land use agreements as an alternative to the statutory regime. Such agreements were proving popular, six having already been registered by the end of February 2000; another six had been submitted for registration, and many others were under negotiation.

33. Since the Committee's meeting in August, discussions had also begun between the South Australian Government and indigenous representatives on a regional agreement between that government, indigenous representatives and pastoral and mining interests. The agreement would be made under the Indigenous Land Use Agreement provisions of the Act but would operate in parallel to the Act's provisions. It was open to the Commonwealth to participate in those discussions.

34. One issue of concern to the Committee had been the possibility of extinguishment of native title rights under the amended Act. In the 18 months since the amended Act had come into force, there had been no evidence that the validation or confirmation provisions had resulted in any permanent extinguishment, for example through claims for compensation or a court decision. During that period, many indigenous representatives had made extensive submissions on how the amended act was functioning. Over the past six months, the Attorney-General and the Leader of the Government in the Senate had met with indigenous representatives in Queensland and the Northern Territory to discuss those issues, and discussions with representatives in other states was likely in the near future. Commonwealth officials had also held extensive talks with indigenous representatives and ATSIC on a range of matters relating to the operation of the amended Act.

35. The Parliamentary Joint Committee on Native Title, whose mandate had been extended by five years under the 1998 amendment, was empowered to review and report to the Commonwealth Parliament on the Act's implementation. Moreover, information from ATSIC, the Federal Court and the National Native Title Tribunal, as well as information and advice from indigenous representatives and the Parliamentary Joint Committee, was helping the Government monitor implementation of the Act.

36. The amended Act had come about through careful consideration of often-competing rights in the aftermath of an unexpected court decision. The initial evidence bore out her Government's view that, given a reasonable chance to work, the amended Native Title Act could achieve fair results.

37. Ms. McDOUGALL (Country Rapporteur) thanked the Australian delegation for its comprehensive report and in particular for information on compliance at the level of states and territories. The large delegation showed how seriously Australia took its obligations under the Convention.

38. She noted that the two groups most affected by racial discrimination in Australia were the indigenous and migrant communities, which suffered for reasons of ethnic background, national origin and colour; yet despite the Committee's earlier request for more information, the twelfth periodic report (CERD/C/335/Add.2) failed to give sufficient details of how the situation had improved for the migrant population. She was also concerned about the full integration of women's rights in the context of the Convention and would welcome any information on how racial discrimination affected the situation of indigenous women, women refugees and women migrants.

39. In deciding to examine Australia's twelfth periodic report at the current session, the Committee did not intend to set aside the review of the situation in Australia under the early warning procedures, which it had initiated in its Decision 2 (54) of March 1999. In Decision 2 (55) of August 1999, the Committee had reaffirmed that position and decided that it would continue consideration of the matter together with the State party's twelfth periodic report at the current session. The issues raised at those two decisions remained of utmost concern.

40. Beginning with the implementation of article 2 of the Convention, she commended the Australian Commonwealth and the governments of the states and territories of Australia for enacting an impressive array of laws and setting up a large number of bodies and programmes to combat racial discrimination. She had only a few specific questions regarding implementation of article 2. In the view of the State party, did the Convention establish a legal duty to ensure formal equality with regard to the rights of historically disadvantaged racial and ethnic groups that still suffered from those inequalities, or did it introduce an obligation to achieve equality in practice? Did the State party consider that the Convention imposed obligations that were absolute, or did it believe that it had a "margin of appreciation"?

41. She was concerned that there was no specific prohibition of racial discrimination in Australian law. The Commonwealth could override the protection under the Racial Discrimination Act simply by passing subsequent legislation. That problem had been seen in connection with the amendment to the Native Title Act. On the other hand, she noted that the Social Security Legislation Amendment Act contained a provision specifying that new legislation must be interpreted subject to the provisions of the Racial Discrimination Act. If the Racial Discrimination Act was overridden, did that amount to a repudiation of the State party's obligations under the Convention?

42. She sensed a reluctance to take steps to ensure the harmonious implementation of the provisions of the Convention at federal, state and territory levels. That point had been raised when considering Australia's ninth periodic report. The discriminatory impact of law in the states and territories on matters for which they had primary jurisdiction, for example social programmes, remained a matter of serious concern.

43. In considering Australia's ninth periodic report, the Committee had welcomed the establishment of ATSIC and the Human Rights and Equal Opportunity Commission (HREOC), but changes, either implemented or under discussion, to the functioning of those institutions might have an adverse impact on their work. ATSIC served the needs of the Aboriginal community in negotiations with the Government, and she wondered whether it was not being disempowered.

44. Turning to implementation of article 4, she asked to what extent the Racial Hatred Act fulfilled the State party's obligations under paragraphs (b), (c) and (d) of that provision. How was Australia dealing with the presence in the country of organizations which openly espoused racial hatred?

45. She welcomed the increase in government resources for activities to address the social and economic disadvantages of the indigenous community. Were government programmes being monitored to see whether they were truly designed to meet the particular needs of the indigenous population and overcome a history of institutional racial discrimination? Why had a country with Australia's resources been unable to ensure that a community representing less than 2 per cent of the population had a decent standard of living?

46. With regard to implementation of article 5, the Royal Commission of Inquiry into Aboriginal Deaths in Custody (RCIADIC) had found that the degree of overrepresentation of Aboriginal persons in custody was 29 times that of non-Aboriginals and concluded that that was due above all to the disadvantaged and unequal position in society of that population group. She noted that the Government had accepted 338 of the Royal Commission's 339 recommendations and allocated $A 400 million to implement them. Yet despite that commitment, the total number of Aboriginal deaths in custody had increased. According to an independent study, there was no evidence to bear out assertions by state and territory governments that they had implemented those recommendations, and those authorities had taken legislative actions not envisaged in the recommendations which had led to an increase in Aboriginal imprisonment. The Royal Commission had recommended non-custodial strategies, particularly for juveniles, yet juvenile Aboriginal incarceration rates had remained disproportionately high. Much of that increase had been attributed to mandatory sentencing laws currently in place in at least one state and one territory, as well as limited non-custodial options. Even the Attorney-General of Victoria had stated that he planned to raise the issue at the State/Commonwealth Attorneys-General meeting, because in his view mandatory sentencing was racist and unethical and deliberately targeted a particular group in the community.

47. She noted that in the Northern Territory, Aboriginal people accounted for 25 per cent of the overall population and 32 per cent of the population in the age group 12 to 25, yet 76 per cent of all adults in custody there were of Aboriginal origin, and 73 per cent of those in juvenile detention were indigenous persons. The most common offences were those which resulted in the mandatory sentence. The same situation existed in Western Australia. Did the State party agree with the finding of a government committee that mandatory sentencing had a discriminatory impact on indigenous people and was inconsistent with articles 2 and 5 of the Convention? Why was the federal Government's power to override laws passed in states and territories not being used?

48. Although there was a programme to guarantee interpretation in courts to non-English speakers, it was not readily available to the Aboriginal community. Could the delegation provide information on such services?

49. With regard to the amendment to the Native Title Act 1993, she reminded the delegation that in its Decision 2 (54) of March 1999, the Committee had urged the Australian Government to suspend implementation of the amendments and to reopen negotiations with representatives of the indigenous community to find a mutually acceptable solution that would meet the requirements of the Convention. That position had been maintained in Decision 2 (55) of August 1999, although it had been decided to continue monitoring the situation under the Committee's early warning and urgent action procedures, in connection with the consideration of the tenth, eleventh and twelfth periodic reports. In the meantime the Committee awaited with interest the outcome of the deliberations of the Parliamentary Joint Commission on Decision 2 (54).

50. Although it was too early to assess the full impact of the amendment to the Native Title Act, certain worrying trends had begun to emerge, including the introduction of legislation which restricted the ability of native title holders to negotiate over land use, or else replaced it with a lesser right of notification and consultation. Through a loophole in legislation, such provisions had been enacted in two regions with large indigenous populations, the Northern Territory and the State of Queensland. Moreover, such legislation was not subject to the provisions of the Racial Discrimination Act. In effect responsibility for many native title matters was being delegated to state or territorial authorities. She would welcome further clarification on those points.

51. Since the main advantage of the cumbersome registration procedures involved in native title claims was the right to negotiate, it was highly regrettable that such a right could now be denied under state and territorial regimes. She welcomed the news from the delegation that a fairly high percentage of claims had been successfully registered, which was rather surprising given that many applicants did not have proper legal representation. Had there been any complaints in that connection?

52. She sought confirmation that under new legislation in Western Australia the native title on at least 1,300 grants had been extinguished under the confirmation of extinguishment regime, and, moreover, that the scope of the legislation had been extended to include land where there were public works. Seemingly schemes implemented under the 1998 Amendment Act effectively enabled state and territorial authorities to take action which would otherwise have required the prior consent of native title holders.

53. As far as the reconciliation process was concerned, she recalled that 1 in 10 indigenous persons in Australia over the age of 25 had been forcibly removed from his or her family as a child. To what extent had the recommendations issued as a result of the national inquiry into the separation of those families been followed up? Also, why was it apparently so difficult for the Australian Government to take full responsibility and apologize for the actions of its predecessors? What Government activities had been undertaken as part of the reconciliation process and had any criteria been established for assessing when the process would be complete?

Was the indigenous community involved in the process through consultations and negotiations? In her view, true reconciliation could not be achieved without the agreement of all parties concerned.

54. Would the Australian Government pay heed to recommendations contained in the report by the inquiry commission chaired by Ms. Elizabeth Evatt? In conclusion, referring to the delegation's earlier remarks about the importance of the indigenous community being well and expertly represented in order to put forward its views, she wondered why not one single member of the delegation before the Committee was of indigenous origin.

55. Mr. DIACONU welcomed the establishment in Australia of institutions with appropriate policies and programmes on racial discrimination targeted mainly at the Aboriginal and Torres Straight Islander population. It was also encouraging to hear of the growth of the Aboriginal population since 1991 and that the trend was likely to continue in future. However that would place greater obligations on the Australian Government arising from the Convention relating to judicial matters, health, education, employment and land issues.

56. With regard to the latter, the Committee understood the rationale behind the National Title Amendment Act of 1998 but would like to know more about its consequences for the indigenous community. What was the outcome of the regime of confirmation? How many titles had been confirmed as having been extinguished? Reference had been made to the extinguishment provision applying to some 21 per cent of the population, yet Aboriginals currently held around only 15 per cent of titles. How could that discrepancy be explained? Likewise what were the consequences of the provision on negotiation between title holders and others? Were agreements concluded thereunder and what if pastoralists refused to negotiate? Had any alternative regimes been established by the state and territorial authorities and, in the affirmative, to what effect? Had consultations been held with representatives of the indigenous communities with a view to reaching mutually acceptable arrangements on land issues?

57. Turning to judicial matters, he said that the fact that the services of interpreters were not universally available to members of the indigenous community during court proceedings was clearly discriminatory since it denied them the right to due process. There seemed to be a particularly high incidence of mandatory sentencing amongst Aboriginals in the Northern Territory. Moreover, recommendations by a royal commission into Aboriginal deaths in custody for the development of strategic plans had not been followed up by the authorities of the Northern Territory. What steps would the federal Government take to remedy the situation? He sought clarification regarding the system for mandatory sentencing applied in the Northern Territory. According to the Committee's sources, in the event of an infringement, failure to pay a fine within a given time-frame could result in a warrant of commitment and subsequent imprisonment. If such legislation existed, it should be reviewed as soon as possible and brought into line with international human rights agreements.

58. He would welcome more information on the introduction of legislation authorizing the building of the Hindmarsh Island Bridge, which would entail the destruction of a sacred Aboriginal site, as well as information on plans for uranium mines that were likely to pollute the environment in areas habitually inhabited by Aboriginals, such as Beverley in south-western Australia.

59. Australia was not the only State party to the Convention with a federal system of government, and that could not be used as a pretext for its failure to comply with the obligations under the Convention. Notwithstanding discrepancies existing in legislation between the different states and territories of the federation, it was the federal Government that was ultimately responsible for taking appropriate action to guarantee the implementation of the Convention. What exactly was meant by the statement in the report to the effect that an individual might choose to lodge a complaint under federal, state or territorial procedures? Did federal law take precedence over other legislation?

60. With regard to education, were the languages of the main immigrant communities (Italian, Serbo-Croat and Chinese) taught in schools?

61. The Committee maintained its recommendation with regard to article 4 (a) of the Convention, given the Australian Parliament's failure to endorse proposed amendments to the Criminal Code for the classification of racial vilification as a criminal offence.

62. Mrs. ZOU Deci said Australia's report was unnecessarily long and detailed on some matters, yet far too brief on others of particular interest to the Committee. More information should have been provided on the impact of the great variety of legislation in force and whether problems of racial discrimination still existed in the country. While she acknowleged that progress had been made over the years in terms of immigration policy, there were reports that some discrimination persisted against coloured people, especially with regard to employment and housing. The federal Government should make a greater effort to implement truly multiracial policies.

63. There was no reference in the report to the One Nation Party. Furthermore, she had been unable to obtain any information from the embassy in her country on the party's aims and principles. Surely under Australian law political parties had to submit their charter and manifesto when registering with the authorities? Since the party leader, Pauline Hansen, had recently stood for election, she must have had an election manifesto. The party advocated white supremacy and was opposed to the Aboriginal community and any further influx of coloured people into Australia. Xenophobic and racist tendencies, which were largely based on economic considerations, were on the rise worldwide - hence the organization of the World Conference against Racism. The fact that the leader of the One Nation Party had not been elected to power did not mean that the Australian Government could simply ignore the existence of such problems. To her knowledge, the party had not been disbanded.

64. Further areas of concern included the Native Title Amendment Act of 1998, which represented a regression in relation to the original Act. Also, according to information recently furnished by the Anti-Racist Information Service (ARIS), the leader of the Ku Klux Klan was scheduled to visit Australia, presumably not as a tourist. It was to be hoped that the Australian Government would continue to monitor all forms of racial discrimination existing in the country and would take appropriate counter and remedial measures.

65. Mr. RUDDOCK (Australia) reassured the Committee that no representative of the Ku Klux Klan had been granted a visa to enter Australia. There was a universal visa requirement for all visitors to the country, including United Kingdom citizens, and members of the Ku Klux Klan had been blacklisted.

66. Some Committee members seemed to be under the impression that the early warning and urgent action procedures in connection with the Native Title Amendment Act were still applicable to the Australian Government. However, in the light of the Committee's decision 2 (55) of August 1999, the Government had proceeded on the basis that such measures no longer applied and it would suffice for the Committee to be kept informed of relevant developments in periodic reports submitted on a regular basis.

The meeting rose at 6.05 p.m.